

**California Regional Water Quality Control Board
Santa Ana Region**

June 24, 2005

ITEM: 8

SUBJECT: Amendment to Order No. R8-2004-0093, Bluestone Communities, Tract 31892 (a.k.a. "Winchester Ridge" and "Menifee Heights"), Community of Winchester, Riverside County

SUMMARY

The matter before the Board is to consider adopting Order No. R8-2005-0096, amending Order No. R8-2004-0093 and authorizing the discharge of fill into one additional 0.03-acre seasonal pool, known as Seasonal Pool 4, considered to be waters of the State, that has been determined to be outside of the U.S. Army Corps of Engineers jurisdiction and not subject to regulation under Clean Water Act Section 404 (non-federal waters). Seasonal Pool 4 was not shown as scheduled to be filled when R8-2004-0093 was considered by the Board.

BACKGROUND

California Water Code (CWC) Section 13376 states that, "any person discharging dredge or fill material or proposing to discharge dredged or fill material into the navigable waters of the United States within the jurisdiction of this state shall file a report of the discharge in compliance with Section 13260." Section 13260(a) of the CWC requires that any person discharging waste or proposing to discharge waste within any region, other than to a community sewer system, that could affect the quality of the waters of the State, file a report of waste discharge (ROWD). Under federal Clean Water Act (CWA) Section 401, every applicant for a federal permit or license for any activity that may result in a discharge to waters of the United States must obtain State Water Quality Certification (Certification) that any discharge from the proposed activity will comply with state water quality standards.

Most Certifications are issued in connection with U.S. Army Corps of Engineers (Corps) CWA Section 404 permits for dredge and fill discharges. The State Water Resources Control Board (SWRCB) and Regional Water Quality Control Boards administer the Certification program in accordance with the requirements of California Code of Regulations Title 23, section 3830 et seq. Since November 2003, all Certifications have been issued by the Executive Officer accompanied by authorization to discharge in accordance with State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification." In the absence of the need to obtain a Certification, the SWRCB has asserted its authority to regulate discharges of dredge and fill to waters of the State under the Porter-Cologne Water Quality Control Act. On May 4, 2004, the State Water Resources Control Board issued Water Quality Order No. 2004-0004-DWQ, "Statewide General Waste Discharge Requirements for Dredge and Fill Discharges to Waters Deemed by the U.S. Army Corps of Engineers to be Outside of Federal Jurisdiction (Order No. 2004-0004-DWQ).

STAFF REPORT

Numeric impact thresholds limit the application of Order No. 2004-0004-DWQ to relatively small discharges of fill.

On June 30, 2004, Regional Board staff received an application to obtain a Report of Waste Discharge (ROWD) from the agent for Bluestone Communities, Glenn Lukos Associates (GLA), for the Winchester Ridge Residential Development Project (Project). Bluestone Communities requested authorization, through waste discharge requirements, to discharge fill into the 0.86-acre stock pond, 0.03 acre of drainage channel, and 0.04 acre of seasonal pools. Bluestone Communities proposed to preserve two seasonal pools, Seasonal Pools 3 and 4 (see Exhibit 1), totaling 1,749 square feet (0.04 acre). On November 5, 2004, the Regional Board adopted Order No. R8-2004-0093, authorizing the proposed discharges of fill to waters of the State. Although Bluestone Communities' agent, Glenn Lukos Associates, reviewed and commented on the draft Order and staff report, Bluestone Communities later noted that an error had been made in outlining the project description in the ROWD. In addition, an older version of the proposed development plan had been used to depict the project's discharges of fill in the original ROWD.

The version of the map submitted with the original ROWD depicted the preservation of Pools 3 and 4 by Bluestone Communities, however Pools 3 and 4 were in fact intended to be proposed for fill, thus increasing impacts by 0.04 acre from 0.93 acre to 0.97 acre. This apparent series of errors resulted in significant wasted Regional Board staff resources in preparing an erroneous order for the Board's consideration. After discussions with Regional Board staff, the applicant has now agreed to preserve Pool 3 and limit discharges of fill to Pool 4. This will preserve 0.01 acres of the 0.04 acres of waters of the State and will reduce discharges of fill from 0.97 acre to 0.96 acre. Bluestone Communities submitted a ROWD on May 2, 2005, requesting authorization to discharge fill to Pool 4.

Regional Board staff had determined that the Regional Board could not authorize the discharges of dredge or fill proposed in the original ROWD in accordance with Order No. 2004-0004-DWQ because the discharges exceeded the impact thresholds of that Order. Order No. 2004-0004-DWQ does not allow for Regional Board staff to consider discharges of dredge or fill to separate waters from a project in a piecemeal fashion. All of the discharges must be considered together in determining if the project's discharges can be authorized under Order No. 2004-0004-DWQ. Consequently, the discharge proposed in the amendment cannot be authorized under Order No. 2004-0004-DWQ.

Order No. R8-2004-0093 required the applicant to purchase 1.00 acre of mitigation credits from the Barry Jones Wetland Mitigation Bank in the San Diego Region. This purchase was completed in January 2005. At that time, Regional Board staff had reservations regarding mitigating for impacts to beneficial uses outside of the Santa Ana Region and continues to have those reservations. However, since attending regular meetings with local Resource Conservation Districts and other agencies involved in resource conservation, Regional Board staff has learned that there are a variety of groups and agencies that may be interested in undertaking seasonal pool restoration, creation, or enhancement projects within the Santa Ana Region. Consequently, Regional Board staff, with concurrence from the discharger, believes that it would be appropriate to require creation or restoration of seasonal pools within the Santa Ana Region, allowing a reasonable timeframe in which to identify an acceptable project and a project proponent to carry out the creation or restoration. In determining an acceptable

STAFF REPORT

project and project proponent, consideration will be given to the appropriate recommendations found in the "Federal Guidance on the Use of In-Lieu-Fee Arrangements for Compensatory Mitigation under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act" (2000).

Pursuant to CEQA, an addendum to the original environmental impact report was prepared and certified by the County of Riverside and a Notice of Determination was filed on September 22, 2004.

RECOMMENDATION

Board staff recommends that the Regional Board adopt Amended Order No. R8-2005-0096.

Comments were solicited from the following agencies and parties:

U.S. Fish and Wildlife Service

Department of Fish and Game

U.S. Environmental Protection Agency, Supervisor of the Wetlands Regulatory Office

State Water Resources Control Board, Department of Water Quality, Water Quality Certification Unit



Legend

- OHWM/Streambed Width NO OHWM
 ▲ Soil Pit Isolate Drainage (CDFG Jurisdiction Only)
 ● Seasonal Pool Development Plan
 ○ Photo Location Revised Development Plan
 Stock Pond
 Property Boundary

Contour Lines and Development Plan provided by AEI_CASC Engineering

MENIFEE HEIGHTS

Jurisdictional Delineation Map (04/24/05)

GLENN LUKOS ASSOCIATES



Exhibiti

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June 7, 2005

California Regional Water Quality Control Board
Santa Ana Region

Order No. R8-2005-0096

Amending Order No. R8-2004-0093
Waste Discharge Requirements

for

Bluestone Communities
Tract 31892, Riverside County
Winchester Ridge Project

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), finds that:

1. Bluestone Communities (hereinafter, discharger) proposes to develop Tract 31892 in the Winchester area of Riverside County, by building approximately 390 dwelling units on approximately 238 acres located in the southern portion of Section 31, Township 5 South, Range 2 West, shown on the U.S. Geological Service *Romoland, California* quadrangle.
2. Within the Tract are 900 linear feet of drainage channel, four seasonal pools, and one large stock pond. Two of the seasonal pools are associated with naturally occurring groundwater seeps, one pool was formed incidental to agricultural road construction and one pool developed as the result of seepage from the stock pond. The pools formed from the groundwater seeps are wetlands that meet criteria in the US Army Corps of Engineers (Corps) 1987 Wetland Delineation Manual. Because the waters are isolated, the Corps declined to take jurisdiction as waters of the U.S. in a letter dated April 13, 2004, and no Clean Water Act (CWA) Section 404 Permit will be issued.
3. On June 30, 2004, the discharger submitted a Report of Waste Discharge (ROWD) requesting authorization to discharge fill to the entire 0.86 acres of the stock pond, 0.03 acres (250 linear feet) of the drainage channel, and 0.04 acres of the pools formed incidental to road construction and resulting from seepage from the stock pond. The discharger proposed to avoid the two seasonal groundwater seeps and their associated pools, and 650 linear feet of drainage channel. The discharger committed to mitigate direct impacts to waters of the State by purchasing 1.0 acre of mitigation credit to be applied in the Barry Jones Mitigation Bank in the City of Temecula.
4. On November 5, 2004, the Regional Board adopted Order No. R8-2004-0093 authorizing the discharges of fill to waters of the State on Tract 31892 as proposed.
5. On May 2, 2005, the discharger submitted a ROWD requesting authorization to discharge fill to one of the seasonal pools (Pool 4) that had been incorrectly proposed for preservation in the June 30, 2004 ROWD.
6. Waste Discharge Requirements (WDRs) are necessary to address impacts of the additional fill on beneficial uses of the water of the State (Pool 4).

7. This Order authorizes and regulates the proposed additional discharge of fill material to waters of the State that are not considered under Corps CWA Section 404 jurisdiction (non-federal).
8. The Board has notified the discharger and other interested agencies and persons of its intent to prescribe waste discharge requirements for the discharge and has provided them with an opportunity for public hearing and opportunity to submit their written views and recommendations.
9. The Board, in a public meeting, heard and considered all comments pertaining to the discharge on June 24, 2005.

IT IS HEREBY ORDERED that the discharger, in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, shall comply with the following:

- A. The discharger shall pay an in-lieu fee to a natural resource management entity for the purpose of creating or restoring a minimum of 0.06 acres of seasonal pools within the Santa Ana Region, subject to approval by the Executive Officer. The creation or restoration project shall begin initial groundwork not later than 24 months from the adoption of this Order and the in-lieu fee shall include the cost of a minimum of 5 years of follow-on maintenance and monitoring. The discharger shall identify the management entity receiving the in-lieu fee and the creation or restoration project to be funded, not later than 90 days from the adoption of this Order and shall pay the in-lieu fee not later than 30 days from the date of approval by the Executive Officer. Proof of the payment shall be provided to the Regional Board within 60 days of the date of approval by the Executive Officer.
- B. In the event that the discharger is unable to identify an acceptable management entity and project, the Executive Officer may grant a one-time extension of 90 days to identify the entity and project.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on June 24, 2005.

Gerard J. Thibeault
Executive Officer